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HUMAN RESOURCES MANAGEMENT: OTHER HUMAN RESOURCES QUESTIONS

Reform of the internal system of justice in the United Nations Secretariat

Report of the Secretary-General

I. INTRODUCTION

1. The present report describes the implementation measures required to reform the Organization's internal justice system, as requested by the General Assembly in its resolution 49/222 of 23 December 1994. These proposals stem from the report submitted to the Assembly on 8 November 1994 (A/C.5/49/13) enumerating a number of basic concepts for the improvement of the internal justice institutions.

2. The goal of the proposed reform is to re-establish conditions that would allow for a fair and efficient internal justice system in the Secretariat. The present system was designed at a time when there were only a few thousand staff members and only a few cases per year. It relies on joint participation of volunteer staff members who advise the Secretary-General on appeals and disciplinary cases. As at 30 June 1994, and in the Secretariat alone, the number of staff members was 14,865. To this must be added the staff members of a number of other United Nations organs, such as the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Children's Fund (UNICEF), which also use the internal system of justice in the Secretariat. The number of additional staff exceeds 18,500 and does not include the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) area staff who have their own Staff Regulations and Rules. The number of appeals has grown from 18 in 1970 to 108 in 1994. The system is perceived as slow, complex, inefficient and self-serving. The need for reform has been recognized by the General Assembly, the Secretariat and the staff.

3. Lengthy processing of appeals breeds administrative uncertainty and staff discontent. Delay in disciplinary cases creates unnecessary anxiety for staff members suspected of misconduct and deprives the Organization of the capacity to ensure swift action in the context of the greater accountability expected of its staff. Further delays occurred in recent years owing to the fact that a number of cases called for technical knowledge in specialized areas, such as procurement, taxes or financial matters. There is a great need for individuals who have expert knowledge and dispute-resolution skills not commonly available among a body of lay advisers. The system must ensure prompt and fair consideration of all cases and provide competent, impartial and timely advice in disciplinary cases.

4. The purpose of the proposed reform is threefold:

(a) To enhance earlier reconciliation and resolution of disputes before they develop into formal litigation;

(b) To professionalize the membership of appeal and disciplinary panels, and to provide them the means to dispose of cases in a more expeditious yet fair fashion;

(c) To provide a cost-effective and simple justice system, with the elimination of hidden costs and cross-subsidization.

5. The present report explains the mechanisms by which the proposed reform will be achieved and addresses its financial implications.

II. EARLY RECONCILIATION AND RESOLUTION OF DISPUTES

6. The Secretary-General is committed to a collegial, friendly and positive atmosphere in staff/management relations conducive to quality work at a level of productivity in line with staff qualifications and with the Organization's changing mandates. Lack of speedy resolution of staff grievances would constitute a major obstacle to that commitment. To avoid this, the Organization will provide training in early resolution of conflicts, emphasize mediation of differences and increase its capacity to conduct effective review of administrative decisions at an early stage of the appeals process.

A. Training

7. In line with the introduction of a new management culture in the Secretariat, the Administration has already placed greater emphasis on the early resolution of conflicts through dialogue, positive communications, exchange of information and reconciliation of differences. New training programmes tailored to improve communications skills and emphasize client service have been designed. Those programmes, which include components related to dispute-resolution techniques, were provided for in the 1995 budget. They have already begun and will be provided on a continuing basis.

B. Ombudsman mediation panels

8. Ombudsman panels at all major duty stations will be appointed jointly by existing staff/management machinery to deal with disagreements, grievances and discrimination issues raised informally by staff members. The new system will replace the current panels on discrimination and other grievances created pursuant to the General Assembly's request in its resolution 31/26 of 29 November 1976 to appoint a panel to investigate allegations of discriminatory treatment. The purpose of the reform is to introduce a more effective system and to encourage mediation, using the positive experience of other agencies within the system.

9. Ombudsman panels will be established under the guidance and direction of a Coordinator at a high level, who will ensure a proper functioning of the new system. In line with the Secretariat's new management culture, the panels will enjoy a higher profile than present discrimination panels, emphasizing mediation between the parties in order to resolve disputes or grievances before they develop into formal litigation. Members of ombudsman panels will be trained as part of the training programme mentioned in paragraph 7 above.

10. Should the General Assembly approve this reform, the Coordinator would be appointed in the autumn of 1995 and organize ombudsman panels at Headquarters, at Geneva, Vienna, Nairobi and Jerusalem, and at the regional commissions. Members of ombudsman panels will normally provide their services in addition to their regular duties. On urgent matters, however, the Coordinator may request the supervisors of the members of a particular ombudsman panel to release them from their regular duties in order to expedite resolution. Detailed terms of reference will be established in an administrative instruction.

C. Substantive review of administrative decisions

11. The present system requires staff members wishing to appeal an administrative decision to request, as a first step, a review of that decision. Administrative reviews are normally prepared by the Administrative Review Unit in the Office of Human Resources Management. Over recent years, the Administrative Review Unit was not staffed adequately to prepare a substantive review in writing before an appeal was filed, owing not only to the greater number of requests for review but to the substantial increase in the number of appeals and especially disciplinary cases also handled by that Unit. It is likely that a number of cases reached the litigation stage when a substantive review could have resulted in an informal resolution or a formal settlement. A different concern was expressed by staff who had reservations at having the Administrative Review Unit, which defends the validity of decisions at the appeal stage, review those decisions at a prior stage.

12. It is proposed that, as at 1 January 1996, review of administrative decisions will be conducted within the Office of the Under-Secretary-General for Administration and Management, independently of the Senior Legal Adviser, who provides advice on decisions to be taken on recommendations received from advisory bodies in appeal and disciplinary cases. The Review Officers will examine the merits of all requests and seek relevant information from the office

or department that took the contested decision. Each request will be reviewed to determine whether a decision should be reversed or amended in a mutually acceptable manner, consistent with the relevant regulations and rules, as well as with the obligation to treat staff equally. When appropriate, the Review Officers will recommend corrective measures to the Under-Secretary-General who, depending on the particular decision and the rules on delegation of authority, may act directly or in collaboration with the head of the office or department concerned.

13. In order to allow resolution at this stage of the maximum number of cases, the Staff Rules will be amended to allow for the possible extension of the present time-limits to conduct a review, which are one month for staff members in New York, two months for all other staff members. Experience has shown that the present time-limits are often not long enough either to obtain the relevant information from the field or to convince a programme manager to change his or her decision. In order to provide Review Officers with a real opportunity to settle cases, staff rule 111.2 (a) (ii) has been amended to provide a two-month review period for cases arising in New York and a three-month review period in other cases (see annex I).

III. PROFESSIONALIZATION OF THE JUSTICE SYSTEM

14. The Secretary-General believes that the justice system will be substantially improved by professionalizing the bodies considering appeals against administrative decisions and disciplinary cases and by appointing a Legal Officer to the Panel of Counsel on which staff members rely to represent them.

A. Replacement of the Joint Appeals Board by an Arbitration Board

15. Under the present system, the role of the Joint Appeals Board (JAB) is advisory to the Secretary-General. Its recommendations, even unanimous, are not binding on him. However, in the last decade, a policy had developed whereby, except in cases where a major question of law or principle arose, the Secretary-General would attempt to accept unanimous recommendations of JAB. Nevertheless, in 1992, over 52 per cent of unanimous JAB recommendations were rejected, 39 per cent were rejected in 1993 and 32 per cent were rejected in 1994 because, in the view of the Secretary-General, issues of law or principle had not been properly addressed by the JAB panels.

16. The Secretary-General believes that a professional mechanism to deal with grievances will speed up resolution of disputes and lead to a greater acceptance of recommendations. The Secretary-General intends to accept the unanimous recommendations of the new body, unless there is a compelling reason of law or policy not to do so. Such a reason will be identified in the letter informing the staff member of the decision on the appeal. The new, professionalized system will also allow for the gradual introduction of binding arbitration, as contrasted to the present system, which is based solely on review and recommendations until a case eventually - and often years later - reaches the

Tribunal. The introduction of binding arbitration will speed up final resolution of disputes but conferral of the power to make binding awards requires that the Arbitration Board be external since staff members cannot adjudicate disputes between the Secretary-General and his staff.

17. The Secretary-General thus recommends the introduction of an outside and professionalized dispute-resolution mechanism together with the introduction of optional arbitration proceedings. This will be done through the establishment of a United Nations Arbitration Board (hereafter "the Arbitration Board") to replace the current in-house JAB system. While mandatory binding arbitration is not proposed at this stage, the Secretary-General proposes to consider immediately, on a case-by-case basis, requests from staff members to have their cases resolved through binding arbitration. The system will be reviewed in 1998 and, if binding arbitration has been successful, it may be made compulsory for defined classes of appeals, which could include, for example, appeals where the disputed issues are purely factual or do not involve more than a stated amount.

Structure and composition of the Arbitration Board

18. JAB, panels of which are currently located in New York, Geneva, Vienna and Nairobi, will be replaced by an Arbitration Board, which will have its main secretariat in New York and a secretariat in Geneva.

19. These changes require the authorization of the General Assembly since the JAB mechanism, composed of staff whose powers are limited to making recommendations, was established by the Secretary-General pursuant to staff regulation 11.1. Furthermore, appeals from JAB to the Administrative Tribunal are authorized by staff regulation 11.2 and so this regulation will also have to be changed.

20. Draft changes to the Staff Regulations, and consequential changes to the Staff Rules, to permit the establishment of the Arbitration Board are set out in annex I. The Arbitration Board itself will be established by statute, promulgated by the Secretary-General. A draft of that statute is contained in annex II, accompanied by a brief commentary explaining the more technical aspects of the statute. The main features of the Arbitration Board are described below. Consequential amendments to the statute of the Administrative Tribunal are found in annex III.

Major features of the Arbitration Board

21. Article 1 of the statute establishes the Arbitration Board and article 2 defines its competence and jurisdiction. The Arbitration Board will replace JAB. In addition, when the Secretary-General and a staff member have agreed to submit a dispute to the Arbitration Board for binding arbitration, the Board will have the authority to issue a binding award (which can only be appealed on very narrow grounds: see para. 32 below).

22. Article 2 also provides an enhanced mechanism for conciliation, which, under the present system, may occur only with the consent of both parties. The present limited mechanism has proved to be of little practical use. Under the new system, conciliation could take place at the request of either party. More

importantly, the Chairperson of the Arbitration Board, or a panel of the Arbitration Board dealing with an appeal, could direct the parties to attempt to conciliate in good faith, under rules to be established by the Arbitration Board.

23. The membership of the Arbitration Board is dealt with in article 3 of the draft statute; it will be headed by a Chairperson located in New York (based on the current JAB workload in New York of some 70 reports per year), and an Alternate Chairperson located in Geneva (based on a current workload in Geneva of some 20 reports per year). Both in New York and in Geneva there will be two members and two alternate members who are to be available in the event of the illness or unavailability of a member. Only the Chairperson will serve on a full-time basis. The Alternate Chairperson, as well as the members or alternate members, will serve on a part-time basis, as needed. The Chairperson, Alternate Chairperson and members and alternate members will be appointed by the Secretary-General after consultation with staff through the joint machinery established pursuant to staff regulation 8.2.

24. Article 4 sets out the structure of the Arbitration Board. It will be composed of a total of 10 externally recruited experts, no 2 of whom may be from the same Member State, a rule derived from the statute of the Administrative Tribunal.

25. To ensure the independence of the Board's members and to enable them to issue awards that bind the Secretary-General, they will not be staff members of the Organization, but each will have, solely when exercising their adjudicatory functions, the status of a United Nations official, which will confer upon them functional privileges and immunities. Such status, which is similar to that enjoyed by the Chairman of the Advisory Committee on Administrative and Budgetary Questions (ACABQ), would require action by the General Assembly in the resolution amending the Staff Regulations. If the General Assembly approves the present report, it is anticipated that selection of the members of the Arbitration Board will begin in July 1995 and that their appointment will take place in late 1995.

26. The Chairperson of the Arbitration Board will be responsible for the proper administration of the system and will be in charge of the Board's secretariat, which will be headed by a Secretary to be appointed after full consultation with the staff.

27. Article 5 of the draft statute deals with promulgation by the Board of rules of procedure and describes the manner in which the staff will be consulted on the elaboration of those rules.

28. Article 6 defines the conditions of receivability of an appeal to the Arbitration Board.

29. Article 7 of the draft statute sets out the powers of the Board. When the Board acts in a non-binding capacity, its powers are in essence the same as those of JAB, which it replaces: it makes recommendations to the Secretary-General. When the Arbitration Board makes binding awards, its powers are no greater than those of the Tribunal. The most important limitation is that,

having regard to the role of the Secretary-General as the chief administrative officer of the Organization, neither the Tribunal nor the Arbitration Board may compel the Secretary-General to rescind a decision or compel the specific performance of an obligation. Both the Tribunal and the Arbitration Board, when issuing binding decisions, must fix compensation in the event that the Secretary-General decides in the interest of the Organization that an appellant should be compensated without further action being taken. Although the Secretary-General has a choice between specific performance or payment of damages, he is bound by a decision of the Administrative Tribunal and is likewise bound by an award of the Arbitration Board.

30. The Arbitration Board may recommend or award, as the case may be, damages for actual loss but may not recommend or award punitive or exemplary damages. Where a staff member suffers actual loss through non-observance of his or her conditions of employment it is appropriate for the Organization to be responsible for that loss. It is, however, inappropriate for public funds to be used to finance punitive awards. In such cases where the Arbitration Board's report indicates that damages have been awarded because the Board found that there has been a deliberate misdeed of one staff member, the Secretary-General will, in accordance with the requirements of due process, investigate the matter and, if warranted, seek recovery from and bring disciplinary charges against that staff member.

31. Article 8 of the statute provides for publication of the binding awards of the Arbitration Board.

32. Article 9 deals with appeals and provides the same grounds of appeal as present in cases where the Arbitration Board is making recommendations. The fundamental change is introduced in cases where the Arbitration Board is making binding awards. In such cases either party, that is, the Secretary-General as well as the staff member, will have limited grounds of appeal, which are set out in article 9.2: error of law, and fundamental error of procedure or fact that has occasioned a miscarriage of justice. The rationale of this limitation is to foster the speedy resolution of disputes and to reserve for the Tribunal consideration of cases that involve issues of law or matters of special importance.

33. Article 10 deals with amendment of the statute, which requires the approval of the General Assembly.

B. Replacement of the Joint Disciplinary Committee by a Disciplinary Board

34. Under chapter X of the Staff Rules, a Joint Disciplinary Committee (JDC) advises the Secretary-General in disciplinary matters, either before a disciplinary measure has been imposed, or afterwards, on appeal against a decision by the Secretary-General to impose summary dismissal in a case of serious misconduct.

35. The present system has proved to be extremely slow and cumbersome, especially when ad hoc JDCs were constituted in regional commissions or in the

field. In cases requiring specialized knowledge in technical areas, such as taxes or procurement, a recurrent problem has been to identify potential JDC members who would have the ability not only to understand the technical aspects of the activities of a staff member, but also to fairly evaluate whether the staff member has failed to live up to the standards that the Organization has the right to expect.

36. The Secretary-General proposes to replace the JDC by a Disciplinary Board composed of qualified professionals. In order to preserve the Secretary-General's disciplinary authority over staff members, the Disciplinary Board will not take decisions, but will make recommendations on the basis of which the Secretary-General will decide what disciplinary measure(s), if any, are appropriate in the particular circumstances of a case.

37. The New York Section of the Disciplinary Board will be chaired by the Chairperson of the Arbitration Board; the Geneva Section will be chaired by the Alternate Chairperson of the Arbitration Board. This will ensure that the proceedings will be presided by experienced arbitrators used to ascertaining facts from conflicting versions of events. The other members of the Disciplinary Board will be staff members 1/ selected on the basis of their ability to understand the technical aspects of the cases brought before the Disciplinary Board. Once the Board is seized of a case, the Chairperson and the members would consider it on a full-time basis until its completion, thus ensuring a prompt, thorough and fair consideration.

38. The members of the Disciplinary Board will be appointed by the Secretary-General after consultation with staff through the joint machinery established pursuant to staff regulation 8.2. Service on the Disciplinary Board will be part of the official duties of the members who have been selected. Those members will have to be released for that purpose by their parent offices or departments, as needed.

39. It is not possible at the present stage to describe the new system fully or to submit the text of the amendments that will have to be made to the present rules, because essential parts of the components of the new system may be directly affected by the action to be taken by the General Assembly at its resumed forty-ninth session in the light of the report of the Ad Hoc Intergovernmental Working Group of Experts established pursuant to General Assembly resolution 48/218 A of 23 December 1993 (A/49/418). Preliminary consultations with staff indicated that, while they welcome professionalization of the disciplinary process, it is vital that there be full consultation and that they be given every opportunity to comment to ensure that the system adequately protects due process.

1/ Because the Disciplinary Board would not make decisions binding on the Secretary-General, there would be no bar to having qualified and experienced staff members serve as members of the Board, as opposed to the situation in appeal cases, as explained in paragraph 25 above.

C. Appointment of a Legal Officer to the Panel of Counsel

40. In line with the professionalization of the justice system, the Secretary-General proposes to create a post of Legal Officer at the P-4 level to serve full-time on the Panel of Counsel. The new Legal Officer will be able to advise staff as to whether their terms and conditions of employment may have been violated and, if so, how to proceed, either at the early stage of the reconciliation and resolution of disputes or before the Arbitration Board. The Legal Officer would also advise staff members who are the object of disciplinary proceedings. Resources will be provided for the training of Panel of Counsel members.

IV. OBSERVATIONS

41. As indicated earlier to the General Assembly, the staff have expressed support for the basic concepts contained in the report of the Secretary-General on the reform of the internal system of justice dated 8 November 1994 (A/C.5/49/13). Those concepts have now been further elaborated and refined in the present report. In formulating the proposals contained here, the representatives of the Secretary-General again consulted extensively with the staff.

42. While recognizing that the following matters go significantly beyond present United Nations juridical practice and were not discussed in the concept report of 8 November 1994, the staff believe that the present occasion is timely to put on the record their view that (a) outside counsel should be allowed in cases submitted for binding arbitration to the Arbitration Board, and (b) that the two constraints flowing from the statute and jurisprudence of the Administrative Tribunal, namely, with regard to specific performance and the determination of the damages that can be awarded, should not be applied in the functioning of the Arbitration Board.

43. The Secretary-General notes that the reform provides as part of the Panel of Counsel a full-time Legal Officer to represent the staff and that training resources will be provided for the volunteer staff who are members of the Panel of Counsel. Moreover, he is of the opinion that it would not be appropriate or prudent to allow outside counsel before the Arbitration Board. Additionally, the Secretary-General believes that the powers of the Board should be no greater than those of the United Nations Administrative Tribunal. The amendments proposed in the present report in relation to the statute of the Tribunal are limited to the technical changes required to allow for the introduction of binding arbitration.

44. Finally, as indicated in the concept report, the entire system, as well as the statute and role of the Administrative Tribunal, will be reviewed when the new system has been tried out and evaluated for a period of at least two years.

45. There will be an addendum, which will include the financial aspects of the proposed reform.

ANNEX I

Proposed changes to the Staff Regulations and consequential changes to the Staff Rules

Current text	Amended text
Staff regulation 11.1	Staff regulation 11.1
"The Secretary-General shall establish administrative machinery with staff participation to advise him in case of any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules."	"The United Nations Arbitration Board, in accordance with the terms of its statute as promulgated by the Secretary-General, shall be competent, under conditions and procedures prescribed therein, to hear appeals by staff members against an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules or to make recommendations or decisions as may be prescribed by its statute."
Staff regulation 11.2	Staff regulation 11.2
"The United Nations Administrative Tribunal shall, under conditions prescribed in its statute, hear and pass judgement upon applications from staff members alleging non-observance of their terms of appointment, including all pertinent regulations and rules."	"The United Nations Administrative Tribunal shall, under conditions prescribed in its statute, hear and pass judgement upon applications from staff members alleging non-observance of their terms of appointment, including all pertinent regulations and rules, and shall also hear and pass judgement upon appeals by the Secretary-General or staff members against decisions of the Arbitration Board."
Staff rule 111.1 (a)	Staff rule 111.1 (a)
"Joint appeals boards shall be established in New York, Geneva, Vienna, Nairobi and at such other duty stations as may be designated by the Secretary-General to consider and advise the Secretary-General regarding appeals filed under the terms of staff regulation 11.1."	Deleted; dealt with in the statute.

Current text	Amended text
Staff rule 111.1 (b)	Staff rule 111.1 (b)
"(b) Each Joint Appeals Board shall be composed of: "(i) Chairpersons appointed by the Secretary-General from among a list presented by the joint staff/management machinery in respect of the staff representative body or bodies at the duty station at which the Board is established; "(ii) Members appointed by the Secretary-General; "(iii) An equal number of members elected by ballot of the staff under the jurisdiction of the Board. "The number of chairpersons and members of each Board shall be determined by the Secretary-General upon recommendation of the joint staff/management machinery in respect of the staff representative body or bodies at the duty station at which the Board is established."	Deleted; dealt with in the statute and rules of the Arbitration Board.
Staff rule 111.1 (c)	Staff rule 111.1 (c)
"The chairpersons and members of the Joint Appeals Board shall be appointed or elected for two years, shall be eligible for reappointment or re-election and shall remain in office until their successors are appointed or elected."	Deleted; dealt with in the statute and rules of procedure of the Arbitration Board.

Current text	Amended text
Staff rule 111.1 (d)	Staff rule 111.1 (d)
"A chairperson may be removed from a Joint Appeals Board by the Secretary-General upon recommendation of the joint staff/management machinery in respect of the staff representative body or bodies of the duty station at which the Board is established. The members appointed by the Secretary-General may be removed by him. The members elected by the staff may be recalled by a majority vote of the staff under the jurisdiction of the Board concerned, taken at the initiative of any staff representative body at the duty station at which that Board is established."	Deleted; dealt with in the statute.
Staff rule 111.1 (e)	Staff rule 111.1 (e)
"Each Joint Appeals Board shall establish its own rules of procedure, which shall specify how its presiding officer and, where necessary, any alternate presiding officers shall be selected from among the chairpersons."	Deleted; dealt with in the statute.
Staff rule 111.1 (f)	Staff rule 111.1 (f)
"Each Joint Appeals Board may, by a majority vote of all its chairpersons and members, recommend to the Secretary-General changes in the present chapter of the Staff Rules."	Deleted; dealt with in the statute and rules of procedure of the Arbitration Board.
Staff rule 111.1 (g)	Staff rule 111.1 (g)
"The secretariat of each Joint Appeals Board shall consist of a secretary and such other staff as may be required for its proper functioning."	Deleted; dealt with in the statute.

Current text	Amended text
Staff rule 111.2 (a)	Staff rule 111.2 (a)
"(a) A staff member wishing to appeal an administrative decision, pursuant to staff regulation 11.1, shall, as a first step, address a letter to the Secretary-General, requesting that the administrative decision be reviewed; such a letter must be sent within two months from the date the staff member received notification of the decision in writing.	"(a) A staff member wishing to appeal an administrative decision, pursuant to staff regulation 11.1, shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; such a letter must be sent within two months from the date the staff member received notification of the decision in writing.
"(i) If the Secretary-General replies to the staff member's letter, he or she may appeal against the answer within one month of the receipt of such reply;	"(i) If the Secretary-General replies to the staff member's letter, he or she may appeal against the answer within one month of the receipt of such reply;
"(ii) If the Secretary-General does not reply to the letter within <u>one month</u> in respect of a staff member stationed in New York, or within <u>two</u> months in respect of a staff member stationed elsewhere, the staff member may appeal against the original administrative decision within one month of the expiration of the time-limit specified in this subparagraph for the Secretary-General's reply."	"(ii) If the Secretary-General does not reply to the letter within <u>two months</u> in respect of a staff member stationed in New York, or within <u>three</u> months in respect of a staff member stationed elsewhere, the staff member may appeal against the original administrative decision within one month of the expiration of the time-limit specified in this subparagraph for the Secretary-General's reply."

Current text	Amended text
Staff rule 111.2 (b)	Staff rule 111.2 (b)
"(b) The Secretary-General, in reviewing the administrative decision in question, may, with the consent of the staff member or at the latter's request, seek the assistance of a chairperson or member of the appropriate Joint Appeals Board, to be designated by its presiding officer, with a view to reaching a conciliatory conclusion of the matter. This procedure is without prejudice to the right of the staff member to pursue an appeal under the provisions of this rule."	"(b) The Secretary-General, in reviewing the administrative decision in question, may, with the consent of the staff member or at the latter's request, or the Chairperson of the Board may refer the matter to the Arbitration Board for conciliation in accordance with rules to be established by the Arbitration Board. This procedure is without prejudice to the right of the staff member to pursue an appeal under the provisions of this rule and the statute of the Arbitration Board."
Staff rule 111.2 (c)	Staff rule 111.2 (c)
"(c) Neither a request for administrative review under paragraph (a) above nor the filing of an appeal under paragraph (d) below shall have the effect of suspending action on the contested decision.	"(c) Neither a request for administrative review under paragraph (a) above nor the filing of an appeal under paragraph (d) below shall have the effect of suspending action on the contested decision.
"(i) However, the staff member concerned may request a suspension of action on such decision by writing to the Secretary of the appropriate Joint Appeals Board under paragraph (d) below. The request shall set forth the relevant facts and indicate how implementation would directly and irreparably injure the staff member's rights;	"(i) However, the staff member concerned may request a suspension of action on such decision by writing to the Secretary of the appropriate Arbitration Board Section under conditions specified in its statute. The request shall set forth the relevant facts and indicate how implementation would directly and irreparably injure the staff member's rights;"

Current text	Amended text
"(ii) Upon receipt of such a request, a panel of the Board shall be promptly constituted, and shall act expeditiously. If the panel, after considering the views of both parties, determines that the decision has not been implemented and that its implementation would result in irreparable injury to the appellant, it may recommend to the Secretary-General the suspension of action on that decision:	"(ii) Deleted; dealt with in the statute.
"a. Until the time-limits specified in subparagraph (a) (i) or (ii) have passed without an appeal having been filed, or	
"b. If an appeal is filed, until a decision on the appeal is taken;	
"(iii) The Secretary-General's decision on such a recommendation is not subject to appeal."	
Staff rule 111.2 (d)	Staff rule 111.2 (d)
"(d) An appeal pursuant to paragraph (a) or a request for suspension of action pursuant to paragraph (c) above shall be filed with the Secretary of the appropriate Joint Appeals Board, to be determined as follows:	"(d) An appeal pursuant to paragraph (a) or a request for suspension of action pursuant to paragraph (c) above shall be filed with the Secretary of the appropriate Arbitration Board Section to be determined as follows:

Current text	Amended text
"(i) With respect to staff members serving at a duty station at which a Board has been established or who are administered by organizational units located at such duty station, it shall be the Board;	"(i) With respect to staff members serving at a duty station at which an Arbitration Board Section has been established or who are administered by organizational units located at such duty station, it shall be that Section;
"(ii) With respect to former staff members who last served at a duty station at which a Board has been established or who were administered by organizational units located at such a duty station, it shall be that Board;	"(ii) With respect to former staff members who last served at a duty station at which an Arbitration Board Section has been established or who were administered by organizational units located at such a duty station, it shall be that Section;
	"(iii) With respect to staff members serving in Europe and to former staff members who last served in Europe, it shall be the Arbitration Board Section located at Geneva;
"(iii) With respect to all other staff members and all other former staff members, it shall be the Board established in New York, provided that the Secretary-General may decide, at the request of the staff member, to refer the appeal to another one of the Boards or to establish an appropriate ad hoc body. Such staff members or former staff members may meet the time-limits specified in subparagraphs (a) (i) or	"(iv) With respect to all other staff members and all other former staff members, it shall be the Arbitration Board Section established in New York, provided that the Secretary-General may decide, at the request of the staff member, to refer the appeal to the Geneva Section of the Arbitration Board or to establish an appropriate ad hoc body. Such Staff members or former staff members may meet the time-limits specified in

Current text	Amended text
(ii) by delivering the requisite submissions within such limits to any office of the United Nations for transmission to the appropriate Board."	subparagraphs (a) (i) or (ii) by delivering the requisite submissions within such limits to any office of the United Nations for transmission to the appropriate Arbitration Board Section."
	Staff rule 112 (e) to (p)
	Deleted; dealt with in the statute.
No comparable provision.	Staff rule 111.3
	(Transitional provision)
	"Staff rules 111.1 nd 111.2 shall be deemed to be in effect in respect of appeals against administrative decisions made prior to 1 January 1996."

ANNEX II

Draft Secretary-General's Bulletin

Statute of the United Nations Arbitration Board
(with explanatory commentary)*

Article 1

Establishment

Pursuant to the authority conferred upon the Secretary-General by staff regulation 11.1, a United Nations Arbitration Board is established by the present statute, to be known as the United Nations Arbitration Board (hereafter "the Arbitration Board").

Commentary to article 1

Article 1 establishes an Arbitration Board to replace the Joint Appeals Board (JAB). The terms of article 1 are based on article 1 of the statute of the Tribunal.

Article 2

Competence and jurisdiction

1. The Arbitration Board shall be competent to hear and make recommendations upon appeals by staff members of the United Nations alleging non-observance of their contracts of employment or the terms of appointment of such staff members.

2. With the written agreement of the Secretary-General and the appellant staff member, the Arbitration Board shall, to the extent agreed, be competent to decide upon an appeal by that staff member alleging non-observance of his or her contract of employment or the terms of appointment of such staff member.

3. The words "contracts" and "terms of appointment" in paragraphs 1 and 2 of this article include the Staff Regulations and Rules, all pertinent General Assembly resolutions and decisions, and all subsidiary administrative issuances promulgated thereunder, which are in force at the time of the alleged non-observance, but excluding (a) the Regulations of the United Nations Joint Staff Pension Fund and the rules promulgated thereunder; (b) appeals relating to disciplinary measures and procedures arising from article X (Disciplinary measures) of the Staff Regulations and

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* The commentary will be deleted upon promulgation of the Bulletin.

chapter X (Disciplinary measures and procedures) of the Staff Rules and subsidiary administrative issuances promulgated thereunder; and (c) appeals relating to appraisal of a staff member's performance.

4. At the request of either party, or at the direction of the Chairperson of the Arbitration Board, or at the direction of a panel of the Arbitration Board dealing with an appeal, the parties may be directed to attempt to conciliate under rules established by the Arbitration Board.

5. The Arbitration Board shall not be competent, however, to deal with any appeals or requests for conciliation where the cause of complaint arose and the appeal was submitted before 1 January 1996, unless the staff member requests that the appeal be considered by the Arbitration Board.

6. In the event of a dispute as to whether the Arbitration Board has competence, the matter shall be settled initially by the Arbitration Board but either party may appeal on error of law to the United Nations Administrative Tribunal.

Commentary to article 2

1. Article 2.1 confers upon the Arbitration Board the powers of JAB, which body it replaces. The Arbitration Board does not deal with pension matters, nor does it deal with matters related to discipline or performance appraisal.

2. Article 2.2 empowers the Arbitration Board to make binding awards with the consent of the Secretary-General and the staff member and to the extent of their agreement. This reflects arbitration practice where arbitration, and the extent of arbitration, is voluntary.

3. Articles 2.1 and 2.2 replace a number of the provisions on the jurisdiction and powers of JAB found in staff rule 111.1, which rule is to be deleted (other parts of this rule and portions of rule 111.2 will be contained in the rules of procedure of the Arbitration Board).

4. Article 2.3 ensures that the Arbitration Board must decide cases according to the terms of appointment of staff. The provision is modelled on article 2 of the statute of the Tribunal.

5. Article 2.4 empowers the Arbitration Board to conciliate or to direct that an attempt be made to conciliate.

6. Article 2.5 is a transitional measure.

7. Article 2.6 gives the Arbitration Board the power to determine whether it has jurisdiction, subject to a right of appeal to the Tribunal by either party on the sole grounds of error of law.

Article 3

Membership

1. The Arbitration Board shall be composed of ten members, a Chairperson, an Alternate Chairperson, four members and four alternate members. No two of the membership may be nationals of the same State. The membership of the Arbitration Board shall have the following qualifications:

(a) Hold a law degree;

(b) Have been admitted to the practice of law and a member in good standing of a national bar, labour arbitration association or equivalent for at least ten years;

(c) Have experience in labour arbitration.

(d) Have no employment links with the United Nations in the two years prior to appointment.

2. The Chairperson and Alternate Chairperson of the Arbitration Board shall be appointed by the Secretary-General, after consultation with the staff through the joint staff/management machinery established pursuant to staff regulation 11.2, for one non-renewable three-year term.

3. Four members and four alternate members shall be appointed by the Secretary-General after consultation with the staff through the joint staff/management machinery established pursuant to staff regulation 8.2 for a term of two years, which may be renewed for a further period of two years.

4. Remuneration of membership of the Arbitration Board will be established by the Secretary-General, revised from time to time and reported to the Assembly.

5. The membership of the Arbitration Board will have the status of officials of the United Nations while performing functions under this statute. The membership of the Arbitration Board are not staff members of the United Nations and are ineligible for appointment as staff members of the United Nations after completion of their term of office.

6. Neither the Chairperson, the Alternate Chairperson, nor any member or any alternate member of the Arbitration Board can be dismissed by the Secretary-General, except for misconduct and after having had the opportunity to respond to the charges of misconduct. Such person may, within ninety days of dismissal, appeal that dismissal to the Administrative Tribunal in accordance with its statute.

Commentary to article 3

1. Articles 3.1 to 3.3 define the qualifications of the arbitrators and the manner and duration of their appointment.

2. Articles 3.4 to 3.6 deal with the remuneration, status and removal of members of the Arbitration Board.

Article 4

Panels and Chairperson

1. The Arbitration Board will be divided into two sections, to be located in New York and Geneva. The Geneva Section will hear appeals from staff located in Europe, while the New York Section will hear appeals from staff located elsewhere.

2. Cases will be heard by a panel of three, composed of the Chairperson, or Alternate Chairperson, and two members, or alternates.

3. The Chairperson will preside over each panel hearing an appeal unless unable to so do, in which case the panel concerned will be presided over by the Alternate Chairperson.

Commentary to article 4

Article 4 defines the structure and functioning of the panels that will hear appeals.

Article 5

Rules of procedure

1. The Arbitration Board, sitting with a majority of its members, shall establish its own rules, which shall protect the due process rights of the Secretary-General and the staff, provide for effective and prompt hearing of appeals and provide a mechanism for dealing with requests for suspension of action within ten days of receipt. A draft of such rules, or any proposed amendments thereto, shall be submitted for comment to the Secretary-General, whose comments shall reflect the views of the Staff/Management Coordination Committee established pursuant to staff regulation 8.2.

2. A panel may decide, for cause, to waive any of the rules of procedure. The reason for such waiver shall be set out in its recommendation or award.

3. The Arbitration Board shall publish its rules.

Commentary to article 5

1. As the Arbitration Board is, and must be, an independent body, it must establish its own rules of procedure although it is appropriate that the Board consult the Secretary-General for his comments. It is also essential, in order to foster the use of binding arbitration and to comply with the requirements of staff regulation 8.1, that the Secretary-General transmit to the Board the comments of staff and management through the joint staff/management machinery established pursuant to staff regulation 8.2.

2. A panel may waive any of the rules of procedure, but must explain why the rule is being waived.

Article 6

Receivability

An appeal shall be receivable if it is filed within the time-limits and the conditions prescribed in staff rule 111.2 (a), as in force at the time of the alleged non-observance. The Arbitration Board may waive those time-limits.

Commentary to article 6

Article 6 is similar to the present rules and requires that staff file an appeal within stated time-limits for it to be receivable by the Arbitration Board, unless the Board waives those time-limits.

Article 7

Powers

1. A panel of the Arbitration Board shall be competent to consider a request from an appellant for a suspension of action on the contested decision.

2. Upon receipt of a request for a suspension of action pursuant to paragraph 1 of this article, a panel of the Arbitration Board shall be promptly constituted and shall act expeditiously. If the panel, after considering the views of both parties, determines that the decision has not been implemented and that implementation of the Secretary-General's decision would result in irreparable injury to the appellant, it may recommend to the Secretary-General that he suspend action on that decision until it has completed its deliberations on the case or for a stated period. If the panel is exercising its powers pursuant to article 2.2 of this statute, it may, to the extent agreed between the parties in the agreement to submit to binding arbitration, order a stay of action until it has completed its deliberations or for a stated period.

3. A decision of the Secretary-General on a recommendation of the panel for a suspension of action is not subject to appeal.

4. If a panel of the Arbitration Board finds that there has been non-observance of the contract of employment or the terms of employment of an appellant, it may recommend or order, as the case may be, the rescinding of the specific decision or specific performance of the obligation invoked. However, at the same time, it shall recommend or fix, as the case may be, the amount of compensation to be paid to the appellant if, within thirty days of the notification of the recommendation or the binding award, as the case may be, the Secretary-General decides in the interest of the United Nations that the appellant shall be compensated without further action being taken in the case; provided that such compensation shall be in line with that awarded by the United Nations Administrative Tribunal in similar cases and shall not exceed the equivalent of two years' net base salary of the appellant. The panel of the Arbitration Board may, however, in exceptional cases when it considers it justified, recommend or order, as the case may be, the payment of a higher indemnity. A statement of the reasons for the panel's recommendation or award shall be included in the panel's recommendation or award.

5. A panel of the Arbitration Board may recommend or award, as the case may be, damages to compensate a staff member for actual loss. The Arbitration Board may not award, or recommend payment of, exemplary or punitive damages.

6. A panel of the Arbitration Board shall be bound by the jurisprudence of the United Nations Administrative Tribunal and shall consider its own prior decisions and recommendations, and those of other panels, but shall not be bound by those earlier decisions or recommendations.

Commentary to article 7

1. Articles 7.1 to 7.3 deal with suspension of action. When the Arbitration Board is acting in an advisory capacity its powers are the same as JAB. In cases of binding arbitration its powers to direct a stay of action will be to the extent agreed by the parties in their agreement to arbitrate.

2. Article 7.4 is based on the powers granted to the Tribunal in article 9.1 of its statute.

3. Article 7.5 empowers the Arbitration Board to award damages to the extent permitted by the jurisprudence of the Administrative Tribunal. The Arbitration Board is not, however, given power to award exemplary or punitive damages. National legal systems allowing for punitive or exemplary damages usually do so only where there has been a deliberate misdeed or gross negligence; in such cases, the proper course of action for the Organization would be to bring disciplinary charges against the offending staff member or recovery action from him or her of the damages paid by the Organization for the actual loss suffered by the victim.

4. Article 7.6 provides that panels of the Arbitration Board will be bound by the jurisprudence of decisions of the Administrative Tribunal but will not be bound by earlier decisions of the same or other panels of the Arbitration Board.

Article 8

Recommendations and awards

1. A panel of the Arbitration Board shall take all decisions, whether on recommendations or binding awards, by majority vote.

2. Binding awards of a panel of the Arbitration Board shall be published in the working languages of the Board, namely, English and French.

Commentary to article 8

Binding awards will be published in similar fashion to the judgements of the Administrative Tribunal.

Article 9

Appeals

1. If the Secretary-General has rejected a recommendation of the Arbitration Board or has not taken a decision on a recommendation of the Arbitration Board within thirty days of the communication of the recommendation, or if the recommendation accepted by the Secretary-General is not favourable to the appellant, the staff member has the right of appeal to the Administrative Tribunal in accordance with article 7 of the statute of the Tribunal.

2. Within ninety days of communication of a binding award of the Arbitration Board, either party may appeal to the Administrative Tribunal, but only on one or more of the following grounds:

(a) Error of law;

(b) Fundamental error of procedure that has occasioned a miscarriage of justice;

(c) Fundamental error of fact that has occasioned a miscarriage of justice.

Commentary to article 9

1. Article 9.1 is based on the statute of the Tribunal and essentially reproduces the existing appeal system in respect of recommendations of the Arbitration Board.

2. Article 9.2 applies in cases where the Arbitration Board is making binding awards and seeks to limit sharply the grounds of appeal to the Tribunal to error of law and fundamental error of procedure or fact that has occasioned a miscarriage of justice. The philosophy of this limitation is to foster the speedy resolution of disputes and to reserve the Tribunal for consideration of cases that involve issues of law or matters of importance. This will require amendment of the statute of the Tribunal.

Article 10

Amendment

The present statute may be amended by the Secretary-General after the General Assembly has approved the proposed change.

Commentary to article 10

This article provides that changes to the statute of the Arbitration Board require the approval of the General Assembly since awards of the Board will bind the Organization. This provision is based on staff regulation 12.3, which requires that staff rules be submitted to the Assembly for ratification (staff regulation 12.3).

ANNEX III

Revisions to the statute of the United Nations Administrative Tribunal

Texts and commentary with comparative table

A. Amendments to article 2

(a) Insert a new article 2.2 to read:

"The Tribunal shall also be competent to hear and pass judgement upon applications from the Secretary-General or a staff member appealing from an award of the United Nations Arbitration Board (hereafter 'the Arbitration Board') on the grounds that:

"(a) The Arbitration Board erred in law; or

"(b) The Arbitration Board had committed a fundamental error of fact that occasioned a failure of justice; or

"(c) The Arbitration Board had committed a fundamental error of procedure that occasioned a failure of justice."

(b) Renumber article 2.2 as article 2.3 and insert new articles 2.3 (c) and (d) as follows:

"(c) To the Secretary-General of the United Nations when appealing an award of the Arbitration Board;

"(d) To the Chairperson, Alternate Chairperson, a member or alternate member of the Arbitration Board in the event of dismissal by the Secretary-General."

Commentary

1. The new article 2.2 grants competence to the Tribunal to "hear and pass judgement upon applications" (to use the language of article 2.1) by either the Secretary-General of the United Nations or a member of staff who is appealing from an award of the Arbitration Board.

2. The amended and renumbered articles 2.3 (c) and (d) reflect the fact that, under the statute of the Arbitration Board, the Tribunal is open to the Secretary-General as an applicant, as well as to the staff of the United Nations and to an arbitrator who has been dismissed.

3. The Tribunal will have to promulgate rules of procedure to regulate the manner of the making and hearing of appeals from awards of the Arbitration Board.

B. Amendments to article 6

Drafting amendments consequential to changes to article 2

Amend article 6.2 (d) and (e) as follows:

Replace the phrase "paragraph 2 of article 2" with the phrase "paragraph 3 of article 2".

Commentary

This amendment takes account of the fact that paragraph 2 of article 2 has been renumbered as paragraph 3.

C. Amendments to article 7

1. Drafting amendments (to take account of the United Nations Arbitration Board) (new language underlined)

(a) Amend article 7.1 as follows:

"An application shall not be receivable unless the person concerned has previously submitted the appeal to the joint appeals body provided for in the staff regulations or to the Arbitration Board established pursuant to the United Nations Staff Regulations and the latter has communicated its opinion or award as the case may be to the Secretary-General ..."

(b) Amend the opening of article 7.2 as follows:

"In the event that the recommendation of a joint appeals body or the Arbitration Board referred to in paragraph 1 of this article being favourable to the application submitted to it ..."

(c) Amend article 7.3 as follows:

"In the event that the recommendations made by a joint appeals body or the Arbitration Board referred to in paragraph 1 of this article are unfavourable to the applicant, and in so far as this is the case, the application shall be receivable, unless the joint appeals body or Arbitration Board referred to in paragraph 1 of this article unanimously considers that it is frivolous."

(d) Amend article 7.4 as follows:

"An application shall not be receivable unless it is filed within ninety days reckoned from the respective dates and periods referred to in paragraph 2 above, or within ninety days reckoned from the date of the communication of the opinion of the joint appeals body or the Arbitration Board referred to in paragraph 1 of this article containing recommendations unfavourable to the applicant. Nevertheless, the said time-limit on his or her behalf shall be extended to one year if the heirs of a deceased staff member or the trustee of a staff member who is not in a position to manage

his or her own affairs, file the application in the name of the said staff member."

2. Substantive amendments

Amend article 7.6 as follows and insert a new paragraph (b):

"(a) The filing of an application against the recommendation of a joint appeals body or the Arbitration Board referred to in paragraph 1 of this article shall not have the effect of suspending the execution of the decision contested;

"(b) In the event of the filing of an application against an award of the Arbitration Board, action on the award shall be suspended until the application has been dealt with by the Tribunal on the merits."

Commentary

1. Articles 7.1 to 7.4 contain minor amendments to take account of the fact that, for the United Nations, the joint appeals body is replaced by the Arbitration Board. The original language is left for the other organizations that have accepted the Tribunal's statute, except that the second sentence of article 7.4 is deleted, as it related only to the first session of the Tribunal.

2. Article 7.5 is revised to take account of the fact that awards of the Arbitration Board cannot be treated in the same way as recommendations of a JAB since, in the case of recommendations, the Secretary-General had taken the decision that he considers correct. In the case of an award, the Secretary-General may be appealing a decision that he considers incorrect. The basic rule is therefore reversed: the award is not implemented until the Tribunal has dealt with the appeal on the merits.

D. Amendment to article 9.1

Amend article 9.1 to read:

"1. If the Tribunal finds that an application under paragraph 1 of article 2 is well founded ..."

Commentary

1. Article 9 deals with applications other than appeals from binding awards of the Arbitration Board, which are dealt with separately in article 9 bis since, in such applications, either the Secretary-General or a staff member may be the appellant and the contested decision is no longer that of the Secretary-General but the award of the Arbitration Board.

2. No substantive change is made by this amendment.

E. Insertion of a new article 9 bis

"The Tribunal shall hear and pass judgement upon applications appealing from awards of the Arbitration Board pursuant to paragraph 2 of article 2."

Commentary

1. Article 9 bis empowers the Tribunal to deal with applications by the Secretary-General or a staff member appealing from a binding award of the Arbitration Board.

2. The Tribunal may dismiss an application, in which case the award of the Arbitration Board would become final (subject to the procedure in article 11 of the statute, which permits a party to submit an application to the Committee on Applications for Review of Administrative Tribunal Judgements).

3. The Tribunal may allow the appeal by affirming, varying or rejecting the award of the Arbitration Board depending on its view of the legality of the award.

Current text	Amended text
Article 2	Article 2
"1. The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. The words 'contracts' and 'terms of appointment' include all pertinent regulations and rules in force at the time of alleged non-observance, including the staff pension regulations."	1. No change.
No equivalent.	"2. The Tribunal shall also be competent to hear and pass judgement upon applications from the Secretary-General or a staff member appealing from an award of the United Nations Arbitration Board (hereafter 'the Arbitration Board') on the grounds that: "(a) The Arbitration Board erred in law; or "(b) The Arbitration Board had committed a fundamental error of fact that occasioned a failure of justice; or "(c) The Arbitration Board had committed a fundamental error of procedure that occasioned a failure of justice.
"2. The Tribunal shall be open: "(a) To any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death;	"3. The Tribunal shall be open: "(a) To any staff member of the Secretariat of the United Nations even after his employment has ceased, and to any person who has succeeded to the staff member's rights on his death;

Current text	Amended text
"(b) To any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied."	"(b) To any other person who can show that he is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied;
No equivalent.	"(c) To the Secretary-General of the United Nations when appealing an award of the Arbitration Board;
No equivalent.	"(d) To the Chairperson, Alternate Chairperson, a member or alternate member of the Arbitration Board in the event of dismissal by the Secretary-General."
"3. In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal."	4. No change apart from the paragraph number.
"4. The Tribunal shall not be competent, however, to deal with any applications where the cause of complaint arose prior to 1 January 1950."	5. No change apart from the paragraph number.
Article 6	Article 6
"1. Subject to the provisions of the present Statute, the Tribunal shall establish its rules.	1. No change.
"2. The rules shall include provisions concerning:	2. No change.
"(a) Election of the President and Vice-Presidents;	(a) No change.
"(b) Composition of the Tribunal for its session;	(b) No change.
"(c) Presentation of applications and the procedure to be followed in respect to them;	(c) No change.

Current text	Amended text
"(d) Intervention by persons to whom the Tribunal is open under paragraph 2 of article 2, whose rights may be affected by the judgement;	"(d) Intervention by persons to whom the Tribunal is open under paragraph 3 of article 3, whose rights may be affected by the judgement;
"(e) Hearing, for purposes of information, of persons to whom the Tribunal is open under paragraph 2 of article 2, even though they are not parties to the case; and generally	"(e) Hearing, for purposes of information, of persons to whom the Tribunal is open under paragraph 3 of article 2, even though they are not parties to the case; and generally"
"(f) Other matters relating to the functioning of the Tribunal."	(f) No change.
Article 7	Article 7
"1. An application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the staff regulations and the latter has communicated its opinion to the Secretary-General, except where the Secretary-General and the applicant have agreed to submit the application directly to the Administrative Tribunal.	"1. An application shall not be receivable unless the person concerned has previously submitted the appeal to the joint appeals body provided for in the staff regulations or to the Arbitration Board established pursuant to the United Nations Staff Regulations and the latter has communicated its opinion or award as the case may be to the Secretary-General, except where the Secretary-General and the applicant have agreed to submit the application directly to the Administrative Tribunal.
"2. In the event of the joint body's recommendations being favourable to the application submitted to it, and in so far as this is the case, an application to the Tribunal shall be receivable if the Secretary-General has:	"2. In the event that the recommendation of a joint appeals body or the Arbitration Board referred to in paragraph 1 of this article being favourable to the application submitted to it, and in so far as this is the case, an application to the Tribunal shall be receivable if the Secretary-General has:
"(a) Rejected the recommendations;	"(a) Rejected the recommendations;

Current text	Amended text
"(b) Failed to take any action within the thirty days following the communication of the opinion; or	"(b) Failed to take any action within the thirty days following the communication of the opinion; or
"(c) Failed to carry out the recommendations within the thirty days following the communication of the opinion.	"(c) Failed to carry out the recommendations within the thirty days following the communication of the opinion.
"3. In the event that the recommendations made by the joint body and accepted by the Secretary-General are unfavourable to the applicant, and in so far as this is the case, the application shall be receivable, unless the joint body unanimously considers that it is frivolous.	"3. In the event that the recommendations made by a joint appeals body or the Arbitration Board referred to in paragraph 1 of this article are unfavourable to the applicant, and in so far as this is the case, the application shall be receivable, unless the joint appeals body or the Arbitration Board referred to in paragraph 1 of this article unanimously considers that it is frivolous.
"4. An application shall not be receivable unless it is filed within ninety days reckoned from the respective dates and periods referred to in paragraph 2 above, or within ninety days reckoned from the date of the communication of the opinion of the joint appeals body or the Arbitration Board referred to in paragraph 1 of this article containing recommendations unfavourable to the applicant. Nevertheless, the said time-limit on his or her behalf shall be extended to one year if the heirs of a deceased staff member or the trustee of a staff member who is not in a position to manage his or her own affairs, file the application in the name of the said staff member."	"4. An application shall not be receivable unless it is filed within ninety days reckoned from the respective dates and periods referred to in paragraph 2 above, or within ninety days reckoned from the date of the communication of the joint body's opinion containing recommendations unfavourable to the applicant. If the circumstance rendering the application receivable by the Tribunal, pursuant to paragraphs 2 and 3 above, is anterior to the date of announcement of the first session of the Tribunal, the time-limit of ninety days shall begin to run from that date. Nevertheless, the said time-limit on his behalf shall be extended to one year if the heirs of a deceased staff member or the trustee of a staff member who is not in a position to manage his own affairs, file the application in the name of the said staff member.

Current text	Amended text
"5. In any particular case the Tribunal may decide to suspend the provisions regarding time-limits.	5. No change.
"6. The filing of an application shall not have the effect of suspending the execution of the decision contested.	"6. (a) The filing of an application <u>against the recommendation of a joint appeals body or the Arbitration Board referred to in paragraph 1 of this article</u> shall not have the effect of suspending the execution of the decision contested; "(b) <u>In the event of the filing of an application against an award of the Arbitration Board, action on the award shall be suspended until the application has been dealt with by the Tribunal on the merits</u>."
"7. Applications may be filed in any of the five official languages of the United Nations."	7. No change.
<u>Article 9</u>	<u>Article 9</u>
"1. If the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked. At the same time the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained should the Secretary-General, within thirty days of the notification of the judgement, decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his case; provided that such compensation shall not exceed the equivalent of two years' net base salary of the applicant. The	"1. If the Tribunal finds that <u>an</u> application <u>under paragraph 1 of article 2</u> is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked. At the same time the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained should the Secretary-General, within thirty days of the notification of the judgement, decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his case; provided that such compensation shall not exceed the equivalent of two years' net base salary of the applicant.

Current text	Amended text
Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher indemnity. A statement of the reasons for the Tribunal's decision shall accompany each such order.	The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher indemnity. A statement of the reasons for the Tribunal's decision shall accompany each such order."
"2. Should the Tribunal find that the procedure prescribed in the Staff Regulations or Staff Rules has not been observed, it may, at the request of the Secretary-General and prior to the determination of the merits, order the case remanded for institution or correction of the required procedure. Where a case is remanded, the Tribunal may order the payment of compensation, not to exceed the equivalent of three months' net base salary, to the applicant for such loss as may have been caused by the procedural delay.	2. No change.
"3. In all applicable cases, compensation shall be fixed by the Tribunal and paid by the United Nations or, as appropriate, by the specialized agency participating under article 14."	3. No change.
	<u>Article 9 bis</u>
No equivalent.	"1. The Tribunal shall hear and pass judgement upon applications appealing from awards of the Arbitration Board pursuant to paragraph 2 of article 2."

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FIFTH COMMITTEE
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PROGRAMME BUDGET FOR THE BIENNIUM 1994-1995

THE SITUATION IN CENTRAL AMERICA: PROCEDURES FOR THE ESTABLISHMENT OF A FIRM AND LASTING PEACE AND PROGRESS IN FASHIONING A REGION OF PEACE, FREEDOM DEMOCRACY AND DEVELOPMENT

Establishment of a human rights verification mission in Guatemala

Programme budget implications of draft resolution A/49/L.64

Statement submitted by the Secretary-General in accordance with rule 153 of the rules of procedure of the General Assembly

A. Requests contained in the draft resolution

1. Under the terms of operative paragraphs 1, 2, 3 and 6 of the draft resolution, the General Assembly, would:

(a) Welcome the report of the Secretary-General (A/49/860) on the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA);

(b) Take note with satisfaction of the report of the Director of the Mission on the first three months of the Mission's activities;

(c) Decide to authorize the renewal of the mandate of the Mission for a further period of six months, in accordance with the recommendation of the Secretary-General;

(d) Invite the international community to increase its support for institution-building and cooperation projects with governmental and non-governmental organizations, intended to strengthen the Guatemalan system for

the protection of human rights, in particular through voluntary contributions to the trust fund for the Guatemalan peace process being established by the Secretary-General.

B. Activities by which the proposed requests would be implemented

2. Should the General Assembly adopt draft resolution A/49/L.64, the mandate of MINUGUA would be renewed for a further period of six months. The Secretary-General would continue his support for the Guatemalan peace process, as described in his report (A/49/860), and for the fulfilment of other commitments contained in the Comprehensive Agreement on Human Rights (A/48/928-S/1994/448, annex I). MINUGUA would cooperate with national entities, in particular by sponsoring technical cooperation programmes and institution-building activities, promote the international technical cooperation required to strengthen the capacity of the national system for the protection of human rights and invite the international community, through voluntary contributions to the trust fund for the Guatemalan peace process, to increase its support for institution-building and cooperation projects with governmental and non-governmental organizations, with a view to strengthening the Guatemalan system for the protection of human rights.

C. Indication of additional requirements

3. The estimated requirements for the extension of the mandate of MINUGUA for another six months for the period from 1 April to 30 September 1995 would require an additional appropriation of $12,054,300, net of staff assessment, of which $9,856,000 relates to personnel costs, such as salaries, fees, travel and related allowances. The balance of $2,198,300 relates to operational costs, such as rental and maintenance of premises and vehicles and purchase of furniture, vehicles and equipment. These estimated requirements, which are summarized in the table below, reflect the continuation of the same number and level of posts authorized by the General Assembly at its forty-eighth session, namely, 113 international staff (1 D-2, 2 D-1, 8 P-5, 13 P-4, 22 P-3 and 5 P-2, 35 General Service and 27 Field Service), 10 military liaison officers, 60 civilian police, 72 United Nations volunteers and 135 local staff.

4. In the activities related to institution-building, the services of an expert in judicial reform would be required for the purpose of participating in the formulation and development of the integrated programme of strengthening of the status of human rights and of other projects that will form such a programme.

5. Since the establishment of the Mission in Guatemala, geographical and road conditions throughout the country have made it impossible to reach remote areas, particularly those communities in the confrontation areas. In order to ensure the presence of MINUGUA in those areas and to secure a permanent presence throughout the country, provisions for the rental of a helicopter have been included in the estimates.

Summary of estimated requirements

(United States dollars)

Military personnel costs	156.1
Civilian police costs	906.4
Temporary posts (salaries and common staff costs)	5 033.8
Mission subsistence allowance	1 693.9
Travel of staff	99.6
Consultants	62.4
Personal service contracts (United Nations Volunteers)	1 903.8
Rental of aircraft	609.0
Rental and maintenance of premises	272.6
Rental and maintenance of vehicles	314.5
Communications	111.9
Human rights education/public information	100.0
Miscellaneous supplies and services	141.6
Freight and related costs	273.9
Acquisition of furniture and equipment	142.4
Acquisition of communications equipment	232.4
Total	12 054.3

A detailed breakdown of the above-estimated requirements is contained in annex I to the present document.

6. It is estimated that an amount of $100,000 would be required for human rights education and public information in Guatemala to educate and keep the public civic organizations and the mass media, both national and international, informed of the Mission's activities and findings. Funds would be utilized for the production of video and radio programmes and other information material to be distributed inside and outside the country. Radio segments and brochures would include production in Spanish and four major indigenous languages and their transmission to local and regional offices as well as dissemination outside the country. Newsletters would be produced in Spanish and English.

D. Potential for absorption

7. In its resolution 49/220 of 23 December 1994, the General Assembly approved an appropriation of $10,069,600 under section 4 (Peace-keeping operations and special missions) of the programme budget for the biennium 1994-1995 for activities of MINUGUA under its initial mandate for the period 1 October 1994 to 31 March 1995. Owing to the low level of operations during that period, it is estimated that $1,915,500 out of the $10,069,600 will be available to offset part of the additional requirements for the continuation of the activities of MINUGUA for the period from 1 April to 30 September 1995. The balance of $10,138,800 (see annex III) cannot be absorbed.

E. Indication of additional requirements

8. Should the General Assembly adopt the draft resolution, it is estimated that an additional appropriation of $10,138,800 would be required under section 4 (Peace-keeping operations and special missions) of the programme budget for the biennium 1994-1995.

9. Furthermore, an additional appropriation of $769,000 would be required under section 28 (Staff assessment), offset by the same amount under income section 1 (Income from staff assessment).

F. Contingency fund

10. The Secretary-General is of the view that the activities relating to MINUGUA are of an extraordinary nature and should continue to be dealt with outside the procedures related to the contingency fund, as provided for in paragraph 11 of annex I to General Assembly resolution 41/213 of 19 December 1986.

G. Summary

11. Should the General Assembly adopt draft resolution A/49/L.64, an additional appropriation of $10,138,800 would be required under section 4 (Peace-keeping operations and special missions) of the programme budget for the biennium 1994-1995 for activities during the period from 1 April to 30 September 1995. An additional appropriation of $769,000 would also be required under section 28 (Staff assessment), offset by the same amount under income section 1 (Income from staff assessment).

12. The Secretary-General believes that should the General Assembly, at its fiftieth session, decide to extend the mandate of MINUGUA beyond 30 September 1995, he should be authorized to enter into commitments through the the end of December 1995 in an amount not exceeding $5,600,000, or approximately one half of the recurrent cost of the Mission.

ANNEX I

Budget estimates for the period 1 April 1995 to 30 September 1995

(Thousands of United States dollars)

A. Personnel

1. Military observers 156.1

Provision under this heading relates to mission subsistence allowance ($150,100); clothing allowance ($1,000); and death and disability compensation ($5,000) in respect of 10 military observers deployed in the Mission area. Of the 10 military liaison officers currently assigned to the Mission, eight are outposted to the regional and subregional offices and two are assigned to the headquarters of the Mission.

2. Civilian police 906.4

Provision under this heading relates to monthly mission allowance ($900,400) and clothing allowance ($6,000) for 60 civilian police deployed in the area.

3. Personal service contracts 1 903.8

Provision has been made under this heading to cover the cost of contractual arrangements in respect of 72 United Nations volunteers who are engaged in human rights verification activities in the various regions and subregions of the Mission ($1,814,400). The contractual arrangements of $4,200 per month include travel, insurance and allowances of the volunteers currently serving as legal officers and human rights observers.

Included in the estimates are provisions of $89,400 for security services throughout the Mission area.

4. International and local staff 6 889.7

This provision would cover salaries, common staff costs, travel and subsistence in respect of 113 international staff (51 at the Professional level and above, 35 General Service and 27 Field Service) and 135 local level posts. The monthly subsistence allowance is based on daily rates of $107 for the first 30 days and thereafter $82 per day.

In addition, provisions are made for consultation and coordination travel of staff from Headquarters to the Mission area ($99,600). Consultancy services ($62,400) relate to the requirement for an outside consultant in the field of judicial reform and reform of State institutions dealing with human rights. The consultant will participate in the formulation and development of the integrated programme of strengthening of the status of human rights.

The breakdown of provisions under this heading is as follows:

Salaries (international and local)	3 787.4
Common staff costs	1 246.4
Mission subsistence allowance	1 693.9
Consultancies and related costs	62.4
Other official travel	99.6
Subtotal, personnel costs	9 856.0

B. Operational costs

1. Rental and maintenance of premises 272.6

The resources requested relate to 15 rented premises ($176,200): Mission headquarters and the regional office located in Guatemala City and the regional and subregional offices. The estimated costs are $111,400 for the two offices in Guatemala City and $64,800 per month for rented premises outside Guatemala City. In addition, warehouse facilities are estimated at $16,800.

Provision is also made for minor alteration to these premises ($6,000); electricity ($16,000); fuel for generators ($23,800); and maintenance services ($24,000) and maintenance supplies ($9,800).

2. Rental and maintenance of aircraft 609.0

Resources under this heading relate to the continuation of the rental of one Twin Otter fixed-wing aircraft for six months to facilitate travel within Guatemala and to provide for emergencies, including medical evacuations. Estimates are based on a fixed monthly rate of $27,500 for 25 flight hours per month, plus allowances and insurance ($213,000).

In order to access remote areas, which are impossible to reach by vehicle or fixed-wing aircraft, provision has been made for essential use of a medium tactical utility helicopter for 50 hours per month at the rate of $1,200 per hour ($360,000), plus positioning ($20,000), painting ($5,000), fuel ($5,000) and allowances ($6,000).

3. Vehicles and related costs 314.5

Provision is made for the rental of buses, heavy trucks and cranes ($14,200). Provision is also made for the repair and maintenance of vehicles ($130,400); local and world-wide insurance ($35,300); and petrol, oil and lubricants ($134,600).

4. Communications 344.3

Additional communications equipment ($183,600), which is essential to MINUGUA, would be required. These include: one 4.5-meter satellite communications dish ($40,000), which is needed in order to upgrade Earth station

to Mission hub satellite standard; four sets of two rural telephone links ($40,000) to provide remote control for repeater site or data transmission (one set each for Berrillas, Cantabal, Sta. Elena and Nebaj and one set to be kept as a spare); one coded data transmission system for the security network ($9,900) in order to link Mission headquarters with the regional and subregional offices; 20 UHF antennas ($6,000), which are required for each UHF base station at Mission headquarters and the regional offices; five broadband HF antennas ($20,000); six Uninterrupted Power Supply ($24,000) for emergency power back-up system and protection against power transients for the telephone exchanges, fax machines and other communications equipment; and eight telephone carriers ($8,000), which will be installed in those sites where telephone lines are limited. Included in the estimates are freight and related costs representing 12 per cent of the acquisition value ($19,700).

Provision is made also for miscellaneous workshop and test equipment ($14,000) and for miscellaneous spare parts ($22,800) and supplies ($12,000).

Requirements under commercial communications include INMARSAT ($21,600) and INTELSAT ($38,400) charges for lines and usage; telephone ($36,300); and pouch and other mail services ($15,600).

5. Miscellaneous supplies and services 141.6

Provision is made for miscellaneous services in the amount of $37,200, including maintenance of furniture and office equipment ($28,200); medical treatment ($3,600); claims and adjustments ($2,400); and official hospitality ($3,000).

Provision is also made for miscellaneous supplies in the amount of $104,400, such as stationery and office supplies ($24,000); medical supplies ($6,000); sanitation and cleaning materials ($9,600); subscriptions ($3,000); uniforms ($1,500); electrical supplies ($7,200); and other miscellaneous supplies ($53,100), including EDP software and licenses and security supplies.

6. Freight and related costs 261.2

Provision is made for the freight cost ($81,200) of 22 vehicles to be transferred from the United Nations Operation in Somalia (UNOSOM) to replace vehicles in the current MINUGUA stock that are due to be written off over the next six months. Other freight requirements amount to $180,000.

7. Public information 100.0

The estimated requirements will cover public information costs, including equipment, production costs, supplies, duplication costs, dissemination costs and subscription costs.

8. Acquisition of furniture and equipment 155.1

Provision has been made for a small amount of miscellaneous office furniture, as it is assumed that most of the Mission's requirements will be met from furniture from the United Nations Observer Mission in El Salvador (ONUSAL)

($11,200). Miscellaneous EDP equipment is estimated at $6,700. Other required equipment ($118,400) includes 30 air conditioners, 14 heaters, essential surveillance and other security equipment, and freight.

Provision is also made for spare parts for office furniture and equipment ($18,800).

Subtotal, operational costs	2 198.3
Total	12 054.3

ANNEX II

Deployment of personnel

	Approved personnel	1994					1995							Total complement
		15 Oct.	1 Nov.	15 Nov.	1 Dec.	15 Dec.	1 Jan.	15 Jan.	1 Feb.	15 Feb.	1 Mar.	15 Mar.	1 Apr.	
Military personnel	10		1	2	2	2	3							10
Civilian police	60					10			15	5			30	60
International staff:														0
Professional and above														0
D-2	1				1									1
D-1	2			2										2
P-5	8	1		2	1	1		1	2					8
P-4	13	2	2	3	1	1				1	2			13
P-3	22		4	6	2	1		5		1	2		1	22
P-2	5			2	1			1	1					5
Subtotal	51	1	6	15	6	3	0	7	3	2	4	0	1	51
Other categories:														0
General Service	35	2	1	10	6	3	2	2	5				4	35
Field Service	27	1	4	12	1	1	2		3	1	1		1	27
Security Service														0
Subtotal	62	3	5	22	7	4	4	2	8	1	1	0	5	62
Total, international staff	113	6	11	37	13	7	4	9	11	3	5	0	6	113
United Nations Volunteers	72					31	20	19		2				72

ANNEX III

Summary of appropriations, estimated additional requirements, potential for absorption and appropriation required

(United States dollars)

	Estimated expenditure 1 Oct. 1994-31 March 1995	Additional requirements 1 April 1995-30 Sept. 1995	Total estimated requirements 1 Oct. 1994-30 Sept. 1995	Appropriation 1 Oct. 1994-31 March 1995	Additional appropriation required for 1 April-30 Sept. 1995
Military personnel costs	139.7	156.1	295.8	124.1	171.7
Civilian police costs	294.3	906.4	1 200.7	489.0	711.7
Consultancies	46.8	62.4	109.2	12.5	96.7
Temporary posts (salaries and common staff costs)	2 641.4	5 033.8	7 675.2	3 100.2	4 575.0
Mission subsistence allowance	1 018.8	1 693.9	2 712.7	888.2	1 824.5
Travel of staff	52.9	99.6	152.5	62.7	89.8
Personal services contracts (United Nations Volunteers)	587.9	1 903.8	2 491.7	1 198.9	1 292.8
Rental of aircraft	139.3	609.0	748.3	230.0	518.3
Rental and maintenance of premises	198.8	272.6	471.4	250.8	220.6
Rental and maintenance of vehicles	262.3	314.5	576.8	393.1	183.7
Communications	199.4	111.9	311.3	325.0	(13.7)
Human rights education/public information	100.0	100.0	200.0	125.8	74.2
Miscellaneous supplies and services	227.9	141.6	369.5	247.8	121.7
Freight and related costs	541.9	273.9	815.8	704.1	111.7
Acquisition of furniture and equipment	1 187.8	142.4	1 330.2	1 401.9	(71.7)
Acquisition of communications equipment	514.9	232.4	747.3	515.5	231.8
Total	8 154.1	12 054.3	20 208.4	10 069.6	10 138.8